

§ 904.300

decision to remand the initial decision to the Judge is not final agency action.

(l) An initial decision shall not be subject to judicial review unless:

(1) The party seeking judicial review has exhausted its opportunity for administrative review by filing a petition for review with the Administrator in compliance with this section, and

(2) The Administrator has issued a final ruling on the petition that constitutes final agency action under paragraph (k) of this section or the Judge's initial decision has become the final agency decision under paragraph (h) of this section.

(m) For purposes of any subsequent judicial review of the agency decision, any issues that are not identified in any petition for review, in any answer in support or opposition, by the Administrator, or in any modifications to the initial decision are waived.

(n) If an action is filed for judicial review of a final agency decision, and the decision is vacated or remanded by a court, the Administrator shall issue an order addressing further administrative proceedings in the matter. Such order may include a remand to the Chief Administrative Law Judge for further proceedings consistent with the judicial decision, or further briefing before the Administrator on any issues the Administrator deems appropriate.

Subpart D—Permit Sanctions and Denials

GENERAL

§ 904.300 Scope and applicability.

(a) This subpart sets forth procedures governing the suspension, revocation, modification, and denial of permits for reasons relating to enforcement of the statutes cited in § 904.1(c), except for the statutes listed in paragraph (b) of this section. Nothing in this subpart precludes sanction or denial of a permit for reasons not relating to enforcement. As appropriate, and unless otherwise specified in this subpart, the provisions of subparts A, B, and C of this part apply to this subpart.

(b) Regulations governing sanctions and denials of permits issued under the Deep Seabed Hard Mineral Resources

15 CFR Ch. IX (1–1–07 Edition)

Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR part 970.

§ 904.301 Bases for permit sanctions or denials.

(a) Unless otherwise specified in a settlement agreement, or otherwise provided in this subpart, NOAA may take action under this subpart with respect to any permit issued under the statutes cited in § 904.1(c). The bases for an action to sanction or deny a permit include but are not limited to the following:

(1) The commission of any violation prohibited by any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel;

(2) The failure to pay a civil penalty assessed under subparts B and C of this part;

(3) The failure to pay a criminal fine imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA; or

(4) The failure to comply with any term of a settlement agreement.

(b) A permit sanction may be imposed, or a permit denied, under this subpart with respect to the particular permit pertaining to the violation or nonpayment, and may also be applied to any NOAA permit held or sought by the permit holder or successor in interest to the permit, including permits for other activities or for other vessels. Examples of the application of this policy are the following:

(1) NOAA suspends Vessel A's fishing permit for nonpayment of a civil penalty pertaining to Vessel A. The owner of Vessel A buys Vessel B and applies for a permit for Vessel B to participate in the same or a different fishery. NOAA may withhold that permit until the sanction against Vessel A is lifted.

(2) NOAA revokes a Marine Mammal Protection Act permit for violation of its conditions. The permit holder subsequently applies for a permit under the Endangered Species Act. NOAA may deny the ESA application.

(3) Captain X, an officer in Country Y's fishing fleet, is found guilty of assaulting an enforcement officer. NOAA

may impose a condition on the permits of Country Y's vessels that they may not fish in the Exclusive Economic Zone with Captain X aboard. (See § 904.320(c)).

(c) A permit sanction may not be extinguished by sale or transfer. A vessel's permit sanction is not extinguished by sale or transfer of the vessel, nor by dissolution or reincorporation of a vessel owner corporation, and shall remain with the vessel until lifted by NOAA.

§ 904.302 Notice of permit sanction (NOPS).

(a) A NOPS will be served on the permit holder as provided in § 904.3. When a foreign fishing vessel is involved, service will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

(b) The NOPS will set forth the permit sanction to be imposed, the bases for the permit sanction, and any opportunity for a hearing. It will state the effective date of the permit sanction, which will ordinarily not be earlier than 30 days after the date of receipt of the NOPS (see § 904.322).

(c) Upon demand by an authorized enforcement officer, a permit holder must surrender a permit against which a permit sanction has taken effect. The effectiveness of the permit sanction, however, does not depend on surrender of the permit.

§ 904.303 Notice of intent to deny permit (NIDP).

(a) NOAA may issue a NIDP if the permit applicant has been charged with a violation of a statute, regulation, or permit administered by NOAA, for failure to pay a civil penalty or criminal fine, or for failure to comply with any term of a settlement agreement.

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing, and will be served in accordance with § 904.3.

(c) NOAA will not refund any fee(s) submitted with a permit application if a NIDP is issued.

(d) A NIDP may be issued in conjunction with or independent of a NOPS. Nothing in this section should be interpreted to preclude NOAA from initiating

a permit sanction action following issuance of the permit, or from withholding a permit under § 904.310(c) or § 904.320.

§ 904.304 Opportunity for hearing.

(a) Except as provided in paragraph (b) of this section, the recipient of a NOPS or NIDP will be provided an opportunity for a hearing, as governed by § 904.201.

(b) There will be no opportunity for a hearing if, with respect to the violation that forms the basis for the NOPS or NIDP, the permit holder had a previous opportunity to participate as a party in an administrative or judicial proceeding, whether or not the permit holder did participate, and whether or not such a hearing was held.

§ 904.305 Final administrative decision.

(a) If no request for hearing is timely filed as provided in § 904.201(a), the NOPS or NIDP becomes effective as the final administrative decision and order of NOAA 30 days after service of the NOPS or NIDP or on the last day of any delay period granted.

(b) If a request for hearing is timely filed in accordance with § 904.201(a), the date of the final administrative decision is as provided in subpart C of this part.

PERMIT SANCTIONS FOR NONCOMPLIANCE

§ 904.310 Nature of permit sanctions.

(a) NOAA may suspend, modify, or deny a permit if:

(1) A civil penalty has been assessed against the permit holder under subparts B and C of this part, but the permit holder has failed to pay the civil penalty, or has failed to comply with any term of a settlement agreement; or

(2) A criminal fine or other liability for violation of any of the statutes administered by NOAA has been imposed against the permit holder in a judicial proceeding, but payment has not been made.

(b) NOAA will suspend any permit issued to a foreign fishing vessel under section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act under the circumstances set forth in paragraph (a) of this section.